

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ODISCIOUS DOZIER,

Plaintiff,

v.

DAVID ARMSTRONG,

Defendant.

CASE NO. C24-5046 BHS

ORDER

THIS MATTER is before the Court on defendant David Armstrong's motion to dismiss, Dkt. 19. Pro se plaintiff Odiscious Dozier asserts a *Bivens* claim against Armstrong, a safety investigator for the Federal Motor Safety Administration. Dozier claims Armstrong violated his constitutional rights when he investigated Dozier's trucking business, and ultimately placed his business "out of service" for safety violations. See Dkt. 1.

Armstrong seeks dismissal as a matter of law under Federal Rules of Civil Procedure 12(b)(1), arguing that this Court does not have subject matter jurisdiction over Dozier's claims. Instead, Congress has vested exclusive jurisdiction over challenges to

1 out of service orders with the Court of Appeals. Dkt. 19 at 5 (citing 49 U.S.C. §  
2 521(b)(2)(E)(i)).

3 Armstrong also seeks dismissal for failure to state a plausible claim under Rule  
4 12(b)(6). He argues that Dozier has not plausibly pled that Armstrong deprived him of  
5 any constitutional right, Dkt. 19 at 8, and that the Court would have to expand *Bivens* into  
6 a new context to provide relief, *id.* at 9–12.

7 Dozier has not responded to the motion, and the time for doing so has long since  
8 expired. *See* Dkt. 21 at 1 (citing Local Civil Rule 7(d)(4)).

9 The Court may deem a party's failure to respond to a motion to dismiss an  
10 admission that the motion has merit:

11 (2) *Obligation of Opponent.* Each party opposing the motion shall, within  
12 the time prescribed in LCR 7(d), file with the clerk, and serve on each party  
13 that has appeared in the action, a brief in opposition to the motion, together  
14 with any supporting material of the type described in subsection (1). Except  
for motions for summary judgment, if a party fails to file papers in  
opposition to a motion, such failure may be considered by the court as an  
admission that the motion has merit.

15 Local Rule 7(b)(2).

16 The Court concludes that Armstrong's motion does have merit, and that Dozier's  
17 failure to respond to it is an admission of the same. The Court does not have subject  
18 matter jurisdiction over this claim, and Dozier has failed to state a plausible claim for  
19 relief against Armstrong. Armstrong's motion to dismiss is **GRANTED**. Dozier's claim  
20 is **DISMISSED** without prejudice and without leave to amend.

21 Armstrong's motion to stay discovery pending the resolution of his motion to  
22 dismiss, Dkt. 23, is **DENIED** as moot.

1 The Clerk shall enter a **JUDGMENT** and close the case.

2 **IT IS SO ORDERED.**

3 Dated this 10th day of December, 2024.

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6 BENJAMIN H. SETTLE  
United States District Judge